

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT, INC., a Washington State
entity; "DOE(S) 1-100", employees of
FEDEX FREIGHT, INC.; and
CORPORATION(S) XYZ 1-100,

Defendants.

Case No. 2:18-cv-01164 MJP

**AMENDED COMPLAINT FOR
DAMAGES**

[JURY DEMAND]

COMES NOW the Plaintiff, by and through his attorney of record, Ada K. Wong of
AKW Law, P.C., in the above-entitled matter and alleges as follows:

I. PARTIES

1. Plaintiff David Goldstine is a citizen of the United States and a resident of
Everett, Washington.

2. Defendant FedEx Freight, Inc. is, and was at all times material hereto, a
Washington state corporation doing business in Snohomish County, Washington, located at
6414 Hardeson Road, Everett, Washington 98203. It has employed more than 15 employees

1 at all relevant times herein and is an employer as defined in the Washington Law Against
 2 Discrimination. Upon information and belief, FedEx Freight is a corporation with its principal
 3 place of business in Memphis, Tennessee, located at 1715 Aaron Brenner Dr., Memphis,
 4 Tennessee 38120; and its corporate headquarters office is located in Memphis, Tennessee.

5 3. Defendants “Doe(s) 1-100,” in doing the things complained of herein, were
 6 acting within the course and scope of their employment by FedEx Freight, Inc.

7 4. Defendants “Corporation(s) XYZ 1-100” are corporations whose identities are
 8 unknown to Plaintiff at this time, but in doing the things complained of herein, were acting
 9 within the course and scope of their relationship with Defendants and/or were entities involved
 10 in causing harm to Plaintiff as alleged herein.

11 5. Each defendant is, and at all times herein mentioned was, an agent of the other
 12 and acting within the course and scope of FedEx Freight, Inc. in causing the harm as alleged
 13 herein.

14 II. JURISDICTION AND VENUE

15 6. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because it is
 16 a civil action between citizens of different states and the amount in controversy in excess of
 17 \$75,000.00, exclusive of interest and costs.

18 7. After Plaintiff initially filed this action in the Superior Court for the County of
 19 Snohomish, State of Washington, Defendant FedEx removed this case to federal court pursuant
 20 to 28 U.S.C. § 1332 on or about August 8, 2018.

21 8. Plaintiff David Goldstine timely filed a charge of discrimination with the Equal
 22 Employment Opportunity Commission (“EEOC”), alleging discriminatory conduct and
 23 retaliation by Defendants. The EEOC issued a Right to Sue letter dated June 21, 2018.

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III. FACTS

9. Plaintiff hereby incorporates by reference all allegations contained in paragraphs 1 through 8, above.

10. In or around February 2015, Plaintiff David Goldstine began working at FedEx Freight, Inc.'s (hereinafter "FedEx") Everett facility as a Road Driver.

11. Plaintiff was a full-time employee earning \$25.83 per hour and \$0.6411 per mile at the time he was decertified to drive on or around April 11, 2017.

12. Plaintiff earned the Bravo Zulu Award in January 2017, and a safety award in February 2017.

13. In order to drive a vehicle for FedEx, drivers must be certified to drive under Department of Transportation ("DOT") standards, which requires an annual physical examination indicating the driver is able to drive.

14. Plaintiff was recertified by U.S. Healthworks on or around March 9, 2017. The recertification is in effect for one year.

15. On or around April 6, 2017, Plaintiff was dispatched to deliver a damaged trailer to Portland, Oregon.

16. Upon inspection of the trailer, Plaintiff discovered that the door was damaged in such a way that prevented the door from being closed.

17. The trailer door was missing or had misaligned door rollers, and the door cable was frayed and tangled.

18. It was dark and raining at the time, so Plaintiff did not attempt to close the trailer door because he determined that it would be unsafe for him to do so.

1 19. Shortly before 9:00 p.m., Plaintiff called his supervisor, Aaron Jessen, who
2 surveyed the scene and attempted to close the door.

3 20. Mr. Jessen was unable to close the broken door and the trailer had to be serviced
4 by a third-party repair company.

5 21. FedEx policy states that trailers are not supposed to leave the dock with the door
6 open.

7 22. Supervisor Kenny Kass said it was not his job to close the broken door.

8 23. On or around April 7, 2017, FedEx Supervisor Randy Mott combatively
9 approached Plaintiff and demanded to know why he did not drive the defective trailer to
10 Portland.

11 24. Plaintiff explained that he had safety concerns about attempting to close the
12 door by himself and that Mr. Jessen had attempted to close the door but was unsuccessful.

13 25. Mr. Mott then proclaimed that Plaintiff had failed to do his job.

14 26. Plaintiff explained why he did not close the trailer door, specifically that it was
15 dark and rainy, he had a flashlight in one hand, he saw that the door was damaged, and he has
16 limited range of motion in his knee that makes it difficult to climb into the trailer.

17 27. Mr. Mott responded by saying: "If you have any limitation that prevents you
18 from closing that door, we need to note that and you may need to find another job."

19 28. Plaintiff attempted to remove himself from the increasingly hostile discussion,
20 but Mr. Mott physically blocked his access to the office to clock in. Mr. Mott finally allowed
21 Mr. Goldstine to pass, but he continued to state that Mr. Goldstine would "need to find another
22 job."
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1 29. On or around April 11, 2017, through David Appesland, Plaintiff discovered
2 that Defendant FedEx decertified him, and he was not allowed to drive FedEx vehicles.

3 30. On or around April 11, 2017, when Plaintiff reported to work, Service Center
4 Manager David Appesland told Plaintiff that he needed to submit a written statement about the
5 events that transpired on April 6 and 7, 2017.

6 31. Mr. Appesland told Plaintiff that he needed to submit the written
7 statement/report or else he would be “parked”. Being parked as a driver meant that Plaintiff
8 was unable to drive trucks for FedEx.

9 32. Plaintiff asked if he could write his statement at home. Mr. Appesland replied
10 “yes,” but indicated that if he did not have the statement when Plaintiff reported back to work,
11 he would be “parked”.

12 33. At approximately 1:48 p.m., Tammy Rogers, FedEx Safety Assistant, e-mailed
13 Mr. Appesland, along with Ms. Tayman, Mr. Cass, Mr. Carlson, and approximately 15 other
14 FedEx employees that a DOT physical was required for Plaintiff and that his “driver number
15 will be deactivated immediately.”

16 34. At approximately 3:00 p.m., Mr. Appesland informed Plaintiff via telephone
17 that he was decertified until he was recertified by a doctor.

18 35. Upon receiving this information, Plaintiff drove to work to get a form from Mr.
19 Appesland that would allow him to get another DOT physical.

20 36. On or around April 13, 2017, Plaintiff went through a medical re-certification
21 through U.S. Healthworks. The physician who assessed him was aware of Plaintiff’s range of
22 motion limitations resulting from his total knee replacement in 2010.

23 37. The physician re-certified him.

1 38. On or around April 14, 2017, FedEx rejected Plaintiff's re-certification,
2 claiming that because Plaintiff did not disclose him being "disabled" to the physician, the
3 physician was unable to note and acknowledge that his certification was informed and
4 acceptable for purposes of the Federal Motor Carrier Safety Act ("FMCSA").

5 39. The FMCSA DOT form does not require individuals going through a medical
6 certification to list a disability. Plaintiff did, however, list information about his total knee
7 replacement.

8 40. On or around April 18, 2017, Plaintiff attended a meeting with Ms. Tayman
9 where she abusively shouted at him that he has a "disqualifying condition" that makes it illegal
10 for him to drive, and that "she is not here to play games," and accused him of "hiding" his
11 disability.

12 41. During this same meeting, Ms. Tayman informed him that the April 6, 2017
13 door incident was becoming a significant issue. Plaintiff reminded Ms. Tayman that when he
14 was hired, he self-identified as a disabled person, but he emphasized that he has no issues
15 performing the essential functions of his job.

16 42. That same day at approximately 11:00 a.m., Plaintiff e-mailed photos of the
17 trailer in question to Mr. Kass and Ted Carlson, Safety Supervisor in Portland.

18 43. Ms. Tayman insisted that FedEx had a right to know about Plaintiff's disability
19 despite Plaintiff never asking for an accommodation and that his supposed willful withholding
20 of information about his disability was the reason for his decertification on April 11, 2017.

21 44. Further, Ms. Tayman demanded that Plaintiff go through yet another medical
22 re-certification, provide additional information regarding his limitations, and inform the
23 physician about what had happened with the trailer door.

1 45. Ms. Tayman then proceeded to threaten Plaintiff by stating that she could have
2 him prosecuted for falsifying information to the physician and that she could seek a civil
3 penalty against him.

4 46. On or around April 20, 2017, Plaintiff returned to U.S. Healthworks to complete
5 another physical evaluation, but the evaluation was not performed because Dr. Valarie Smith
6 said it was a complete waste of her time and resources as the results from the prior physical on
7 April 13, 2017 were valid for one year.

8 47. Plaintiff confirmed this information with U.S. Healthworks' management.

9 48. On April 24, 2017, Plaintiff sent numerous e-mails to Ms. Tayman asking her
10 to divulge the alleged "disqualifying condition" she claims he has that makes it illegal for him
11 to drive. She did not respond.

12 49. On or around April 25, 2017, Plaintiff spoke with Ms. Tayman and expressed
13 his frustration that his medical disqualification was due to his range of motion limitations. Ms.
14 Tayman yet again told him he had to tell the physicians about his disability in order to obtain
15 a certification that was legally compliant.

16 50. On or around May 3, 2017, Ms. Tayman sent Plaintiff an e-mail misstating
17 several facts about his disability, such as: Plaintiff telling multiple employees that he was
18 unable to perform job duties related to closing a trailer door because, "quote I am disabled."

19 51. Plaintiff did not make these statements as Ms. Tayman claimed.

20 52. On or around May 31, 2017, Ms. Tayman sent Plaintiff an e-mail outlining
21 Defendant FedEx's version of the events, which included more fabrications.
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1 53. After receiving the e-mail and reviewing its inaccuracies, Plaintiff did not
2 obtain another recertification from U.S. Healthwork as he had already been certified by a U.S.
3 Healthworks physician and Dr. Smith refused to re-examine him.

4 54. On or around June 15, 2017, Plaintiff submitted a physical evaluation to FedEx.

5 55. Plaintiff was able and ready to perform the essential functions of his job at all
6 times at FedEx.

7 56. Plaintiff was not allowed to continue working at FedEx.

8 **IV. FIRST CAUSE OF ACTION**

9 **(WLAD – RCW 49.60.180 – DISABILITY DISCRIMINATION)**

10 57. Plaintiff hereby incorporates by reference all allegations contained in
11 paragraphs 1 through 56, above.

12 58. Defendants treated Plaintiff differently in the terms and conditions of his
13 employment on the basis of the presence of any sensory, mental, or physical disability and/or
14 because of Plaintiff's actual or perceived disabilities in violation of the Washington Law
15 Against Discrimination ("WLAD"), RCW 49.60, *et seq.*

16 59. As a direct and proximate cause of Defendants' deliberate actions, Plaintiff
17 incurred non-economic and economic damages, including but not limited to lost wages, future
18 wage loss, other benefits, loss of earning capacity, mental distress, physical damages,
19 emotional distress, and pain and suffering, in an amount to be proven at trial.

20 60. All Defendants are liable for said conduct under both vicarious liability and on
21 an agency relationship. The conduct of Defendants, and each of them, was done in reckless
22 and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain
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1 and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is
2 mandated against each Defendant.

3 **SECOND CAUSE OF ACTION**

4 **(WRONGFUL TERMINATION / CONSTRUCTIVE DISCHARGE)**

5 61. Plaintiff hereby incorporates by reference all allegations contained in
6 paragraphs 1 through 60, above.

7 62. Defendants' deliberate acts made Plaintiff's working conditions so intolerable
8 that any reasonable person would have felt compelled to resign.

9 63. Defendants "parked" Plaintiff and did not allow him to perform his work duties.
10 As Plaintiff was not scheduled to return to work, he was forced to find new employment. He
11 was wrongfully terminated or constructively discharged.

12 64. As a direct and proximate cause of Defendants' deliberate actions, Plaintiff
13 incurred non-economic and economic damages, including but not limited to lost wages, future
14 wage loss, other benefits, loss of earning capacity, mental distress, physical damages,
15 emotional distress, and pain and suffering, in an amount to be proven at trial.

16 65. The conduct of Defendants, and each of them, was done in reckless and
17 conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain and
18 suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is
19 mandated against each Defendant.

20 **THIRD CAUSE OF ACTION**

21 **(WLAD – RCW 49.60.180 – FAILURE TO ACCOMODATE)**

22 66. Plaintiff hereby incorporates by reference all allegations contained in
23 paragraphs 1 through 65, above.

67. If Defendants believed that Plaintiff could continue to work at FedEx with reasonable accommodation, Defendants failed to provide reasonable accommodations for Plaintiff as required by law.

68. If Defendants believed that Plaintiff could continue to work at FedEx with reasonable accommodation, Defendants also failed to engage in an interactive process in exploring possible reasonable accommodations for Plaintiff as required by law.

69. As a direct and proximate cause of Defendants' deliberate actions, Plaintiff incurred non-economic and economic damages, including but not limited to lost wages, future wage loss, other benefits, loss of earning capacity, mental distress, physical damages, emotional distress, and pain and suffering, in an amount to be proven at trial.

70. All Defendants are liable for said conduct under both vicarious liability and on an agency relationship. The conduct of Defendants, and each of them, was done in reckless and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is mandated against each Defendant.

FOURTH CAUSE OF ACTION

(WLAD – RCW 49.60.210 – RETALIATION)

71. Plaintiff hereby incorporates by reference all allegations contained in paragraphs 1 through 70, above.

72. Plaintiff was treated differently and ultimately terminated and/or constructively discharged in retaliation for his complaints related to what he reasonably believed were unlawful employment practices, in violation of the WLAD.

73. Plaintiff has been injured by Defendants' purposeful and intentional discrimination and retaliation, as outlined above, and seeks to recover damages according to proof at trial.

74. As a direct and proximate cause of Defendants' actions, including separation of employment, Plaintiff suffered and continues to suffer damages, including but not limited to physical harm, mental distress, emotional distress, stress, pain and suffering, loss of income, and diminished earning capacity, in an amount to be proven at trial.

75. All Defendants are liable for said conduct under both vicarious liability and on an agency relationship. The conduct of Defendants, and each of them, was done in reckless and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is mandated against each Defendant.

FEDERAL CLAIMS FOR RELIEF

FIFTH CAUSE OF ACTION

(VIOLATION OF THE ADA – DISABILITY DISCRIMINATION)

76. Plaintiff hereby incorporates by reference all allegations contained in paragraphs 1 through 75, above.

77. Plaintiff suffered from a disability covered by the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA").

78. Defendants knew of Plaintiff's disability prior to terminating and/or constructively discharging him.

79. Defendants treated Plaintiff differently in the terms and conditions of his employment, including subjecting Plaintiff to termination and/or constructive discharge, on

1 the basis or belief of a physical or mental impairment that substantially limits one or more
 2 major life activities, his record of such impairment, and/or because Plaintiff was regarded as
 3 having such impairment, in violation of the ADA.

4 80. As a direct and proximate cause of Defendants' deliberate actions, Plaintiff
 5 incurred non-economic and economic damages, including but not limited to lost wages, future
 6 wage loss, other benefits, loss of earning capacity, mental distress, physical damages,
 7 emotional distress, and pain and suffering, in an amount to be proven at trial.

8 81. All Defendants are liable for said conduct under both vicarious liability and on
 9 an agency relationship. The conduct of Defendants, and each of them, was done in reckless
 10 and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain
 11 and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is
 12 mandated against each Defendant.

13 **SIXTH CAUSE OF ACTION**

14 **(VIOLATION OF THE ADA – FAILURE TO ACCOMMODATE)**

15 82. Plaintiff hereby incorporates by reference all allegations contained in
 16 paragraphs 1 through 81, above.

17 83. If Defendants believed that Plaintiff could continue to work at FedEx with
 18 reasonable accommodation, Defendants failed to provide reasonable accommodations for
 19 Plaintiff as required by 42 U.S.C. § 12112(b)(5).

20 84. If Defendants believed that Plaintiff could continue to work at FedEx with
 21 reasonable accommodation, Defendants also failed to engage in an interactive process in
 22 exploring possible reasonable accommodations for Plaintiff as required by the ADA.
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85. As a direct and proximate cause of Defendants' actions, Plaintiff incurred non-economic and economic damages, including but not limited to lost wages, future wage loss, other benefits, loss of earning capacity, mental distress, physical damages, emotional distress, and pain and suffering, in an amount to be proven at trial.

86. All Defendants are liable for said conduct under both vicarious liability and on an agency relationship. The conduct of Defendants, and each of them, was done in reckless and conscious disregard of Plaintiff's statutory rights and in conscious disregard of the pain and suffering it was bound to inflict upon Plaintiff for which an award of punitive damages is mandated against each Defendant.

SEVENTH CAUSE OF ACTION

(VIOLATION OF THE ADA – RETALIATION)

87. Plaintiff hereby incorporates by reference all allegations contained in paragraphs 1 through 86, above.

88. Defendants retaliated against Plaintiff because of Plaintiff's protected activities of complaining due to a reasonable belief in FedEx's unlawful behavior in violation of the ADA. Plaintiff was terminated and/or constructively discharged because of his protected activities. Said termination constitutes retaliation in violation of the ADA.

89. As a direct and proximate cause of Defendants' actions, including termination and/or constructive discharge of Plaintiff, Plaintiff incurred non-economic and economic damages, including but not limited to lost wages, future wage loss, other benefits, loss of earning capacity, mental distress, physical damages, emotional distress, and pain and suffering, in an amount to be proven at trial.

WHEREFORE, Plaintiff prays that the Court enter a judgment against Defendants on his behalf for the following:

- DATED** _____.

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